1891

The Elevator Cases

Thomas Allen Sullivan
Cornell Law School

The Elevator Cases

a study of
The Police Power over
Property and Property Rights

Thesis for the degree of
Bachelor of Laws
By
Thomas Allen Sullivan.

Cornell University
School of Law
1891

General divisions of Subject.

Leading Authorities.

I Riedeman on Leg. Sim. on the Police Powers.

II. Cooley's Constitutional Lim.

III. The Federalist.

IV. Munn v Ill.

V People v Budd.

VI. Blackstone's Commentaries.

VII. Kent's Commentaries.

I Government and its object.

"The object of government is to impose that degree of restraint upon human actions which is necessary to the uniform and reasonable conversation and enjoyment of private rights."[a]

The private rights of the individual, as contrasted with those which may be called public or civil rights and which emenate or rest upon some mandate of municipal authority, are by far the greater rights and more essential to his happiness

[a] Riderman Com. Lim on Police Powers p.

and well-being. They comprise those faculties and functions which belong to and are inherent from nature, and which nature exemplifies and manifests in every department of her dominion, not only individually but collectively.

The mighty oak, that stands the monarch of the forest, with its fifty arms so strong spreads out to the elements such a canopy of luxuriant foliage, that it robs the sapling, whose ill fortune it is to stand within its radius

of the moisture and sunshine that would have enlivened its protoplasm, and quickened its incipient buds to a full and healthy development.

Again, we see the prestige of a dominant race literally exterminating tribes of inferior powers and energies.

But man, a reasonable creature, sees that his greatest advantage lies not so much in the unrestricted exercise of his own native energies, as in protecting his development from the transgression of others. To obtain

this and government and municipal laws were founded.

When, therefore, a society assumes an individuality and takes upon itself a government, every individual of that society yields that much of his natural rights to the whole— the government is necessary for the accomplishment of the purposes of its formation.

A government or "body politic" as so aptly defined in the Preamble of the Constitution of Mass. "is a social compact by which the whole people cov-

mants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good."[a]

Among the fundamental purposes of civilized governments are the security of the person and the protection of property. To these each individual is entitled in return for the concessions he has made to the government; and no more of his natural rights should be resigned than is necessary for securing these to the common [city]

[a] Preamble of Const. of Mass.

ity in general.

The authority by which governments administer these functions is generally denominated the Police Power; and the guaranty the individual has against its undue exercise is either the trend of public opinion or specific limitations, in the grant of power to the general government. "The Police of a State," says Cooley, "in a comprehensive sense, embraces its whole system of internal regulations, by which the State seeks not only to preserve the

public order and to prevent offence against the State, but not to establish, or the intercourse of citizens with citizens those rules of good manners and good neighborhood which are calculated to prevent a conflict of rights, and to insure to each the uninterrupted enjoyment of his own so far as it is reasonably consistent with a like enjoyment of rights by others".[a]

But this does not give power to the people as a whole to control rights of the

[a] Cooley Con. Lim. p. 572

individual which are purely and exclusively private"[a]

The national government can exercise only such powers as are specifically given in the Constitution of the U.S. while the police power of the State is limited only by the Constitution of the U.S. and that of the State itself. These limitations are chiefly if not wholly, expressed in that well worn phrase "no person shall be deprived of life, liberty or property without due process of law"[b]

That amounts to deprivation

[a] Thorpe v. R. & B. Rub. Co., 2 Vt. 148.

[b] Sec. 1 of 14th Amdt. to U.S. Const.; also Art. Con. Ill. Art 2. § 2-13. Const.;

of life, of liberty, or of property and what is due process of law, are all questions of judicial interpretation and have frequently come before our courts.

The masterly and impartial manner in which they have upheld the guaranties of life and personal liberty against the encroachments of hasty and prejudicial legislation - and often in the face of a bitter public opinion - has won for them the admiration of the jurist and the confidence of the people

a E.g. Ex parte Garland. In re Kaine. Calder v Bull. Ect. Ect.

whether they have with equal integrity protected, projected and property rights against class and, legislation will be a main feature in the discussion to follow. The principle question to be considered is the constitutionality of the "Elevator acts" which to a certain degree, not only prescribes the manner of using but also arbitrarily fixes the price to be charged for such use of Elevators.

II. The Relations of Property and Property Rights to the Government.

While the legislature has

power to regulate the use of property and the conduct of persons and though it does in diverse and numerous ways, through its pre vading and ever present authority, supervise and direct the affairs of men in their relations with each other and the community at large to this end to secure the mutual and equal rights of all, and to promote the benefits of society; yet it is equally true, in fact it must necessarily follow, that the incentives to personal indu-stry and economy and the

"general interests of society in its career of wealth and civilization" (Kent) demand that every man should have the free and untrammelled use, enjoyment and disposition of his own property, and the right to follow any legal calling or adopt any legitimate avocation, so long as such use or enjoyment, calling or avocation keeps within the maxim "sic utere tuo ut alienum non laedas."

In the elegant and comprehensive language of Kent, "The natural and active sense

of property pervades the foundations of social improvement. It leads to the cultivation of the earth, the institution of government, the establishment of justice, the acquisitions of the comforts of life, the growth of the useful arts, the spirit of commerce, the productions of taste, the erections of charity, and the display of benevolent affections."

Such being the tendency and influence of this "natural" sense of property upon our social institu-

tions

its gratification within wholesome limitations was considered as an absolute, natural, and inherent right by the founders and expounders of the Common Law.

Blackstone says — "The third absolute right, inherent in every Englishman, is that of property; which consists in the free use, enjoyment and disposal of all his acquisitions, without any control or diminution, save only by the law of the land.

So great, moreover, is the regard of the law for private

property, that it will not authorize the least violation of it, no, not even for the general good of the whole community".[a]

It was encorporated in the declaration of Independence among the inalienable rights of man, and there denominated "the right to the pursuit of happiness."

In the Constitution of the United States and the Bills of Rights of the several states it is classed equally with the great natural rights of personal security and

[a] Blk. Com. Book I pp. 138-139.

and personal liberty.

These constitutional provisions do not create or bestow these natural rights, nor have they reference to rights and remedies as between individuals, but are intended as a protection or safeguard to the citizen against the action of the agencies of the government itself; and the limitations should be construed as broadly as the rights they were designed to protect. These rights are not only to acquire but

to enjoy property.

"When a government" says Cooley "through its established agencies, interferes with the title to one's property, or the independent enjoyment of it, and its act is called into question as not in accordance with the law of the land, we are to test its validity by those principles of civil liberty and constitutional defence which have become established in our system, and not by any rules that pertain to forms of procedure merely"[2]

[2] Cooley Con. Lim. p. 93-4.

III The General scope of the Police Power over property.

Legislative interference with a legitimate private business or private property is admissible only when it is necessary to protect the public peace, health, morals or comfort or to secure the rights of others; or whenever such business or property may be said to be affected by a public interest, by reason of its special character or of some aid, grant or privilege conferred upon it by the State.

While as we have found all persons and property are to a degree subject to the regulations of the State there are certain classes that are peculiarly within the operation of such regulations.

Trades and professions that bear such a relation to the public that a certain degree of skill and proficiency is necessary for their proper exercise without danger to the public - such as the practice of law or medicine. The right of the

legislature, to impose wholesome requirements and regulations as a condition precedent upon entering upon them and of limiting their exercise after it is unquestioned.

2nd There are certain occupations of such a nature, that the individual who employs his property in them is said to dedicate it to a public use, and thereby the public acquires such an interest in it that it is subjected to the needs of the public in the nature of its use, as long as the owner continues it in such business.

Common carriers and innkeepers are examples of this class.

3rd There are still other occupations and callings that may be undertaken only by grant or franchise of the government, as the business of banking and the like. There are still others which are absolutely within the control of the government as the making of currency &c.

The business of transmitting grain from one carrier to another, in the course of its transportation from the

great grain fields of the West, to the markets of the world, is one of recent origin but of rapid growth and development. Being, therefore, of a new, and we may say in its line an unprecedented character, it is difficult to determine to what extent it falls within the metes and bounds of the Police Powers of the State: which metes and bounds never have been and probably never can be judicially defined; each case must rest upon its own facts. It follows from

this very circumstance that difficulty must arise in reconciling the decisions of various courts upon similar facts. All seem agreed, however, upon a few of the general rules that must control in determining the validity of an act. "Does the act in question exceed the utmost limits of the legislative power? If it does not it can stand when brought to the test of the constitution, the question of its validity is at an end and the judicial department

of the government cannot refuse to enforce it."

"The question for the court is one of power and not of expediency".

It is conceded that the business of elevating grain in no way affects the order safety or comfort of the community but on the contrary from its great convenience and advantages it has become almost a necessity and practically an indispensable factor in the commerce of the cereals.

The validity of a statute

which seeks to regulate the business of elevating, and storing grain. and fixing the maximum compensation for such services must, therefor, depend upon the public or private character of that business. Its character must be determined from analogy and comparison with businesses and property uses that are clearly public or private and have been so adjudged.

We have now at some length, and in a general

attempted to set forth a few of the fundamental principles underlying government; its police powers and property rights and their relation to each other.

We will now strive to apply them to the specific cases and the circumstances of their origin.

IV Statement of the Case.

Munn v Illinois [a]

In the year 1870 the State of Illinois adopted a new constitution, the 9th Article of which is entitled "Warehouses." By this art.

"All Elevators or storehouses where grain or other property is stored for a compensation, whether the property stored be kept separate or not, are declared to be public warehouses. It further gives the power to the General Assembly "to pass laws for the inspection of grain,

[a] 69 Ill. 69.

for the protection of producers, shippers and receivers of grain and produce."

Under this authority the Gen. Ass. of Ill., in April of 1871, passed an "act to regulate public warehouses and the warehousing and inspection of grain, and to give effect to Art. 13th of the Constitution of this State."

This act, so far as it bears upon the case, divides warehouse into three classes A, B and C respectively.

Class A shall embrace all warehouses, elevators or gran-

ences located in cities hav-
ing not less than one hundred
thousand inhabitants.

The proprietors, owners,
lessees or managers of any
warehouse of class A are
required to take out a lic-
ense and file a penal bond
of $10000 conditional for
the faithful performance of
his duties as public ware-
houseman. They are further
required to make out and
publish a schedule of rates
for the coming year - the max-
imum of the rates being
fixed by the statute.

Any default or non-compliance with the provisions of the act is made a penal offence punishable by a fine of $100

On June 29th, 1872, an information was filed against Munn & Scott, managers of the Northwestern Elevator of Chicago, charging them with having violated the provisions of the above act.

Munn and Scott, in 1862, leased from the owner grounds upon which they had, with their own means and capital, erected the said Elevator; they had

ever since (to date of trial) owned and operated the same.

In Jan. of each year, they agreed upon and published a schedule of prices as the established rates of that year.

They had complied in all respects with the provisions of the act except in two particulars: they had not taken out the license nor filed filed the bond, as required by sections 3 and 7 respectively.

They had charged for storing and handling grain the rates established and published in Jan. of 1872, which were.

higher than those allowed by 8/8- 5 hr act.

Munn and Scott were found guilty and fined $100 each; the judgment being sustained by Supreme Court of Ill. and affirmed by Sup. Ct. of U.S.[a]

These are briefly the facts in the celebrated "Elevator Case" arising under the Ill. laws.

We will now state the leading N.Y. case and the circumstances of its origin.

People ex rel. of J. T. Budd,

With no special provision in the Constitution of New York, the Legislature, in 1883,

[a] 69 Ill. 69; 94 U.S. 113.

passed an act which fixes a maximum of rates and charges for receiving, weighing and discharging grain by means of floating or stationary elevators or ware houses.

The price fixed being 1/8¢ per bu. For trimming and shoveling to the leg of the elevator, in the process of handling grain by means of Elevators, lake vessels or propellors the ocean vessels or steamships, and canal boats shall the act declares, be required to pay only the actual cost.

The operation of this

act is limited to towns or cities of not less than 150 000 inhabitants and any violation is made a misdemeanor punishable by a fine of not less than $250, giving besides a civil action for damages to the party injured by such violations.

The defendant, Budd, as manager of the C. J. Wells Elevator of Buffalo, there being then a town of more than 150000 inhabitants, was indicted, prosecuted and found guilty of violating the above act.

* Session laws of 1888 C. 5-87

He was fined $250 - the judgment being sustained by both General Term and Court of Appeals.[a]

The other New York case, In re Ahearn and " " Pinto are cases presenting the same questions and were argued and decided with People v. Budd.[b]

[a] People v Budd 117 N. Y. 1.
[b] Memoranda 117 N. Y. 621.

V Review of the decisions.

Grain elevators are by the Ill. Court expressly declared to be public warehouses. But Chief Justice Waite in his opinion admits that this does not make them such if they are not so in fact. From the very nature of the business it is necessary that the grain should be held in the custody of the owners for an appreciable period of time, even if it be for a few hours, or minutes only, necessarily involved in the transfer from one carrier

to another. To that extent, then, is an elevator owner engaged in a business analogous to warehousing. As such, their duty to the public is to stand ready at all times, to receive and store grain for everybody who shall apply for such services. So far only, is the business affected by a public interest, in every other respect it is, essentially private character.

Moreover, it does not appear that there was any such dedecation to a public use of their property by

the elevator owners - but such a dedication is an essential characteristic of a warehouseman - The same is true of common carriers[a] but either may assume such obligations by contract.[b]

If the facts do sustain the holding that they are public warehouses - will that alone justify the compensatory limitations put upon their use? The right to prescribe police regulations for inspection and protection of the public is one thing. arbitrarily fixing the com-

[a] Allen v Sackrider, 37 N.Y. 341; Fish v McLaren, 79 N.Y. 122;

[b] Stephens v Becker 83. Ky. L. 673.

prevention is another and as Justice Peckham, in his dissenting opinion, says, "a far greater and more dangerous power and the two are not necessarily co-ex tensive."[a]

Mr. Chief Justice Bruce, writing the opinion of the Ill. Court in the Munn case, takes the position that Elevators are public warehouses and thus subject to the police regulations.

Limiting their charges is a mere regulation and does not amount to a dep-

[a] 117 U. S. 98.

rivition of their property
its use or enjoyment.
Lee does not recognize
property in anticipated
profits - and says the leg-
islature may impair the
value of property without
infringing any constitu-
tional rights. To quote
from him - "All regulations
of trade with a view to the
public interests, may more
or less impair the value
of property, but they do not
come within the constitutional
inhibition unless they vir-
tually take away and de-

stop those rights in which property exists. This destruction must be for all substantial purposes total."

We are to understand from this, that the Legislature of Ill. could prohibit Munn and Scott from charging anything whatever for the use of their elevator, as much and still infringe none of their constitutional rights, so long as they were allowed to retain and use the actual structures themselves.

To quote from him again, - "The act in question

does not seek to deprive warehousemen of any of their antecedent acquisitions or deprive them of the use of their establishments or confiscate them."

True it does not in so many words say they shall not use their property but under the principle of J. Breer's decision, it may say that they shall receive no compensation for such use. And who will say in this age of commerce and enterprise such a restriction would not be a practical

yes an actual deprivation of property or not?

If this be true, I think the principle involved very similar, if not identical, with that in the famous Hyde Lumber Case[a] - notwithstanding the learned Judge's assertion, that there was no "apposit ness or analogy" - and the distinction waxed plain that "he who runs may read."

The decision of the Ill. Court was by a divided bench - two of the five judges dissenting. Mc Allister writing a dis. opinion.

[a] Hyde Lumber v People 13 N.Y. 378.

Chief Justice Waite, writing the opinion of the U. S. Sup. Court, in the Munn Case, bases his decision on the facts that elevators were of a public character, they had become almost a necessity, and they enjoyed a "virtual monopoly." These elements, joined with the magnitude of the business, so changed its character that it ceased to be "juris privati" only, but had become affected with a public interest, and while applied to such a use were subject to legislative reg-

ulations without encroaching upon the constitutional rights of the owners.

He says,- "They stand, to use again the language of their counsel, in the very "gateway of commerce" and take toll from all who pass. Their business must certainly tends to a common charge and is become a thing of public interest to use. Every bushel of grain, for its passage, pays a toll which is a common charge, and, therefore, accor-

ding to Lord Hale, "every
such warehouseman ought
to be under regulations viz:-
that he - - - take out a
reasonable toll"; certainly if
any business can be clothed
with a public interest and
cease to be "juris privati" only,
this has been. It may not
be made so by the operation
of the Constitution
of the State of Illinois or by
this statute but it is by the
facts." The class of ware-
housemen or wharfingers
Lord Hale had in mind,
when he used the language
as quoted above, was those
a De Portibus maris. 1 Harg. Law Tats. 78.

who enjoyed a legal monopoly by some grant or franchise from the king, indeed, no-one could set up a public wharf or warehouse except by franchise of the king or a prescription time out of memory, which presupposes a grant- those were things the king only had a right to do.

What were considered monopolies at Common law may be inferred from the Statute of 21 James 1, C. 3. where none are mentioned except those originating

in a specific grant.

The Chief Justice in order to make the "facts" create a "public interest" that would bring elevators within the scope of the authority he relies upon, says that they enjoy a "virtual monopoly." Truly this is the first case on record in which a compensatory limitation for the use of private property has been sustained on the ground of a virtual monopoly." The Ch. Justice, it is true cites the case of Allnutt v Anglis[a] as supporting his

a 12 East 527.

his position - But that
was a case where the defts,
the owners of certain London
docks, received a license
from Parliament for the
right to store foreign wines.
This was at the time ex-
clusive, as none but the own-
ers of these docks had the
right to receive the wines
on storage. Although the
Crown might license others,
until he did, this was a
legal monopoly. Has any
such right or privilege
enjoyed by Munn and
Scott? Unquestionably not.
9 Seales. Hooker v Vandewater
4 Denio, 349; Stanton v Allen,
5 " 434; 485.

Justice Gray of the Court of Appeals in his dissenting opinion says, "There is a wide distinction between the cases of which Lord Ellenborough speaks, in Allnutt v. Inglis, where the public have a right to resort to the premises of the individual and to make use of them, and that individual has a monopoly in them for that purpose, and the case of an individual prosecuting his own business upon his own premises, by no lease, privilege or franchise of the sovereign

power. In the latter case it is a matter of option or, rather, of agreement with the owner, whether his premises may be resorted to and his property used by other persons. The public have no independent legal right to make use of them."

Carrying the doctrine of "virtual monopoly" to its logical end, and bearing in mind always, that the question is one of power and not of expediency; and what business or employment will not be subjected to this re-

trictive legislation?

For what industry is there which may not be said to be affected with a public interest and what operator, or class of operators, who by his skill and enterprise, makes his department of that industry of such importance that all who would successfully compete therein must patronize him, may not be said to enjoy a "virtual monopoly."

Ch. J. Waite says if the common carrier, the innkeeper, the wharfinger et

are subject to regulations the elevators should be.

A Common Carrier becomes such by reason of the dedication of his property to the general public - and from this springs the right of the public to demand this service. The same is true of public wharfingers the keepers of common inns and the tendency of recent legislation is to include theaters and places of public amusement also.[1] Tiedeman thinks such legislation unconstitutional and Cooley justifies it on

[a] Allen v Sackrider 37 N.Y. 341.

[1] People v King
Civil Rights Cases

the ground that they are licensed businesses.

The practice, rather than right, to limit the compensation of common carriers, hackmen, innkeepers &c arose out of that period of organized guilds & professions & of when the Parliament, or government of England attempted to prescribe the very manner of living of every individual - his dress - rank in social scale - his religion, his trade &c &c. See as example 5 Eliz. Ch. 4.

Judge Peckham in his dissenting opinion says: "There is no satisfactory ground in my mind, upon which the power may be based to regulate or limit the price of transportation by a common carrier, or the price of entertainment by an innkeeper, who is a private individual and who has received no privilege from the state of any kind." "To say that the carrier (while a private individual) holds a kind of public office, and, therefore, his prices should be limi-

ited, is not, as it seems to me, a very accurate description of his attitude to the public. He holds no office, public or private within any fair meaning of such word and there is no reason, in justice or common sense, why his compensation should be limited by law which would not hold good in the case of every individual dealing with the public, and holding himself out as ready, willing and eager to sell his goods to all comers" [a]

[a] Peckham's dissenting opinion 117 N. Y.

The right to regulate the tolls of millers arose out of the custom of the feudal law. The Lord of the Manor had the right to compel all his tenants to patronize his mill and no one could set up a mill except by his license - and with this went the right to regulate the tolls.[a]

The absolute power the government has to make money and issue currency as a standard of value and medium of circulation - carries with

[a] 15 Viner's Abridg. 898, 899.

with it the right to regulate its use- besides the right of taking interest did not exist at common law.

Moreover, there is to day a strong sentiment against the "Usury Laws" and would have all restrictions swept away.

Mr. J. Waite also cites an Alabama statute that prescribes not only the weight but the price per loaf for bread[a]

Such a law is I think unquestionably unconstitutional.

[a] Mobile v Guille, 3 Ala. N.S. 138.

He thinks the power to regulate the business of elevating grain belongs to the legislature - and its supervisory exercise can only be restrained or attacked by the ballot.

Justices Fields and Strong dissented from the opinion of the majority.

It is safe to say the decision of the U. S. Sup. Court in the Munn case controled the Court of Appeals in their decision of the case of People v Budd - and this too in the face of their own

unimpeachable precedents - In re Jacobs; In re Mark; In re Crowbury and People v Gilson.

The decision was by a divided court however J.J. Peckham and Gray each writing admirable dissenting opinions.

Justice Andrews writing the opinion of the majority, lays some stress on the argument that while it might seem like giving the Legislature unlimited powers over private property; yet such was the state of public

opinion in this country that any serious infraction of private rights would be quickly resented & the people and this he agrees with Ch. J. Waite to be the proper place. This seems to me a poor shift of the responsibility of exercising the power entrusted to the judiciary of the government by its founders & viz. to act as a check upon the legislature to keep it within the limits of the constitution.

Besides sacrificing this principle it opens the

2 Federalist Nos. 50-51.

gates to and sets a precedent for class and local legislation with all its attendant corruptions and evils.

Whatever may have been the occasion of the legislation in Illinois without a doubt the interests of the canal were in view in the passage of the New York act. J. Andrews takes the position that since they, (however remotely) may affect commerce on the canal - a public institution - they were sub-

ject to police regulation -
even limiting of their com-
pensation.

It may be well here
to give Cooley's classification
and summary of trades
and businesses whose char-
ges may be regulated by
the legislature[a]

First - When the business
is one, the following of which
is not of right, but is permitted
by the state as a privilege or
franchise - as lotteries, show,
billiard salons &c.

Second; When the state, or
public grounds, renders

[a] Cooley Con. Lim. 6th Ed. 739.

to the business, special advantages by taxation or otherwise.

Third: Where for the accommodation of business some special use is allowed to be made of public property or of a public easement.

Forth Where exclusive privileges are granted in consideration of some special return to be made to the public.

"Possibly," he says, "there may be other cases - he does not, however, include such an one as the N. Y. or Dl- ~~ates~~ - although the Supreme

case was under criticism in this very definition.

On pages 737-738-739 of his Con. Lim. he says:

"What circumstances shall affect property with a public interest is not very clear. The mere fact that the public have an interest in the existence of the business and are accommodated by it, cannot be sufficient, for that would subject the stock of the merchant and his charges to public regulations. The public have an interest in every business

in which an individual offers his merchandise, his services or accommodations to the public, but his offer does not place him at the mercy of the public as to his charges and prices.

If one is permitted to take upon himself a public employment with special privileges, which only the State can confer on him the case is clear enough."

The Const. of Ill., as will be remembered, gives authority to the Gen. Ass. to pass laws

for inspection & grain for the protection of producers &c.

does this simply that the people of Ill. intended to have the Legislature limit the charges of Elevating or merely to prescribe the rules of weighing - and the giving of warehouse receipts &c - to protect their shippers and producers from frauds?

I think we may conjecture the latter as fairly as the former. Then going one step farther, is it not barely possible that the great wheat ring controling the

Legislature of Ill. by its wealth and influence had the clause as to charges inserted for their own benefit.

For they are obliged to store the grain in the Elevators in order to hold it from the market and get a "corner"; thus a few cents per bu. storage is no doubt a sad handicap to their speculative schemes.

If the elevator owners themselves, form combinations for the purposes of speculation and against discriminations, these

are acts that may be made amenable to the criminal law.

Much has been said and many assertions based upon the theory of inalienable rights of the individual but the fact still remains that the country can never be cursed from too much regard for its laws.

Salus Populi Suprema Lex is the maxim of the common law,[a] but the public rights and individual conveniences constantly clash in such cases there may

[a] Bacon's Max. Reg. 12.

sometimes seem to be a vexatious domineering, on the one hand but then may also be on the other a too exact permit of individual advantage regardless of public interests.

It may be better, then, to give full effect to provisions by which, while due regard is paid to private rights, a proper protection is afforded to public interests.

Thos. Allen Sullivan.